

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 98-0519P

**Gross and Adjusted Gross Income Tax
Calendar Years Ended 12/31/92, 12/31/93, 12/31/94, and 12/31/95**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE(S)

I. Tax Administration – Penalty

Authority: IC 6-8.1-10-2.1(d); 45 IAC 15-11-2

Taxpayer protests the penalty assessed.

STATEMENT OF FACTS

Taxpayer, incorporated in Ohio on January 26, 1963, develops byproducts of the petroleum industry. Taxpayer has consigned inventory, leased bulk storage and manufacturing facilities in Indiana. Upon audit, it was discovered that the taxpayer failed to report federal RAR adjustments for the years 1982, 1983, and 1984. The audit includes the RAR adjustments for those years and adjusts NOL carryback amounts to 1980 and 1981. Regulation 45 IAC 3.1-1-94 requires taxpayers to notify the department within one hundred twenty (120) days after a modification of a federal income tax return. The department made adjustments to the addback of taxes based on income according to Regulation 45 IAC 3.1-1-8. Taxpayer reported as nonbusiness, the gains and losses associated with plant divestitures and the audit found that all such dispositions constitute activities in the taxpayer's normal trade or business under Regulations 45 IAC 3.1-1-29 and 45 IAC 3.1-1-41. In 1993, the year of the highest assessment, the department allowed a \$4,234,626 capital loss as a carry over against the reported 1993 capital gain. For apportionment purposes, the taxpayer erred in its apportionment factors for the property numerator, sales denominator, and sales numerator. Taxpayer failed to report its rent for the Indiana storage facility in 1994 and 1995 although it reported for 1992 and 1993. Taxpayer also failed to include divested inventory for 1993 and the Indiana sales of Nitrogen Division in

gross receipts. In addition, taxpayer underreported their liability by 18% for 1992, 79% for 1993, 41% in 1994 and 0% in 1995.

In a letter dated August 24, 1998, taxpayer requests a waiver of penalties.

1. **Tax Administration** – Penalty

DISCUSSION

Taxpayer was assessed a penalty for failure to correctly report and remit taxes.

Taxpayer requests that the penalties imposed for its 1993 and 1994 tax years be abated because the deficiencies to which these penalties relate were incurred due to reasonable cause and at no time has an Indiana court decided the issue of whether gain or loss from the disposition of business assets should be classified as business income or loss. Given the lack of any judicial precedent in Indiana, it was reasonable for the Taxpayer to rely on precedent established in other jurisdictions in determining whether the gains and losses from the dispositions should be reported as business or nonbusiness income in Indiana. Taxpayer states it exercised ordinary business care in relying on the judicial precedent of another state that has the same definition of business income as Indiana and whose courts have addressed the issue of whether business income encompasses the divestment gains and losses of the type incurred by taxpayer. Taxpayer requests that the penalties associated with these items be abated.

The taxpayer was negligent in not making itself familiar with the Indiana Code and Regulations as the issues addressed in the audit are clear. In addition, taxpayer's audit indicates there are additional issues other than those addressed by the taxpayer that would subject it to a penalty.

FINDING

Taxpayer's protest is denied. The penalty is proper.